

STATE OF CALIFORNIA

STANDARD AGREEMENT

CalPERS STD 213 (Rev 10/15/04)

AGREEMENT NUMBER

2004-

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

California Public Employees' Retirement System

CONTRACTOR'S NAME

2. The term of this Agreement is: through

3. The maximum amount of this Agreement is: \$

4 THIS AGREEMENT IS ENTERED INTO BY AND BETWEEN THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM, HEREINAFTER "CALPERS", AND CONTRACTOR'S NAME, HEREINAFTER "CONTRACTOR", AS FOLLOWS:

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**CONTRACTOR***California Department of General
Services Use Only*

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)

DATE SIGNED (Do not type)



PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

STATE OF CALIFORNIA

AGENCY NAME

California Public Employees' Retirement System

BY (Authorized Signature)

DATE SIGNED (Do not type)



PRINTED NAME AND TITLE OF PERSON SIGNING

FRED BUENROSTRO, CHIEF EXECUTIVE OFFICER

ADDRESS

400 P Street
Sacramento, CA 95814☒ Exempt per:Exempt from approval by the
Department of General Services
Per California Constitution,
Article XVI, section 17.**PROJECTED EXPENDITURES**

AMOUNT ENCUMBERED BY THIS DOCUMENT	PROGRAM/CATEGORY (CODE AND TITLE)			FUND TITLE
\$	Division Division Continued			PERF/Number
PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT	ITEM	CHAPTER	STATUE	FISCAL YEAR
\$	Number	---	---	Select FY or Cont. appropriation
TOTAL AMOUNT ENCUMBERED TO DATE	OBJECT OF EXPENDITURE (CODE AND TITLE)			
\$				

I CERTIFY upon my own personal knowledge that the budgeted funds for the current budget year are available for the period and purpose of the expenditure stated above.

ACCOUNTING OFFICER'S SIGNATURE

DATE SIGNED



A. SERVICES TO BE PERFORMED

Contractor agrees to provide for CalPERS, service in accordance with the terms and conditions set forth herein.

- **Organizational Resources, Client Service Team, and Client Profile**
 - The custodian will have a significant industry presence with numerous complex client relationships – experience servicing large public pension funds is required;
 - The organization must have a demonstrated commitment to the custodial and asset-servicing business indicative of a philosophy of client service and dedication to industry excellence;
 - Client turnover (including both new and terminated client relationships) rates will be reviewed;
 - An experienced and dedicated client service team with a reasonable on-site component will be provided commensurate with the complexity of the CalPERS portfolio and attendant requirements. Two (2) cubicles accommodating a maximum of four (4) on-site personnel total will be provided within the CalPERS facility;
 - A coherent relationship management protocol will be implemented and maintained which provides for the appropriate escalation of issues and special projects within the context of the overall CalPERS relationship;
 - Professional turnover rates will be reviewed;
 - Broad and comprehensive global market coverage will be provided; and
 - The custodian will implement a communications tracking system to monitor all service delivery components, formal requests, associated agreements, and measure the performance of contractual obligations.
- **Core Custodial Services**
 - Fully accrued, trade-date accounting will be provided for all assets;
 - Accounting services will be provided for all investments in the CalPERS portfolio including (but not limited to) the following:
 - All income and security transactions (cash and non-cash); domestic and international equity, fixed-income securities, commingled trusts, securities lending income, and tax receivables;
 - Capital changes, including mergers, acquisitions, tenders, stock splits, warrants and spin-offs;
 - Options, futures, swaps, and any other derivative instruments;
 - Leveraged buy-outs, venture capital, real estate, and various other private equity and debt instruments; and,
 - Forward exchange contracts.

- Access to vault facilities will be provided for the safekeeping and physical delivery of all securities not eligible for depositories;
- Accounting will be provided on a fiscal year basis, July 1- June 30;
- All investments will be booked at cost and reported with updated market values;
- Gains and losses on securities sold will generally be recognized on an average cost basis;
- A comprehensive pricing protocol and system will be in place to independently ensure the accuracy of the prices received from various external sources on a daily basis. This system will employ procedures to verify the primary price to a secondary pricing source, compare prior day's prices to current day's prices, and investigate changes outside established tolerances as well as changes from prior month that appear unreasonable in relation to current market trends;
- All portfolios (where daily information is available) will be priced daily and have daily accounting for the purpose of computing daily net asset values. Where daily pricing is not available, pricing direction will be provided by CalPERS;
- Global custodian uses reliable sources/vendors for corporate action information collection and notification (including a detailed reporting of client entitlements and deadlines) will be provided within a 24-hour period;
- Reports must be provided under the following schedule:
 - Monthly audited accounting and performance reports (hard copy, electronic, and on-line at the discretion of CalPERS) will be provided no later than six (6) business days after month-end for all accounts custodied at the custodian; and,
 - Daily, monthly, and yearly accounting and performance reports will be available.
- An accurate report of all holdings, yearly transactions, and other pertinent investment data, will be provided no later than thirty (30) days after the end of each fiscal year in a format to be agreed upon by both parties;
- Custodian's automated systems will be able to interface with CalPERS' investment accounting systems to fully comply with the CalPERS' requirements for reconciliations, pricing, tolerance audits, data quality, research of unpriced securities, and for variance resolution;
- Custodian will provide technical expertise and assistance to CalPERS investment accounting and portfolio administration personnel including, but not limited to:
 - Providing direct access to designated individuals to assist with technical questions; and,

- Providing an account administrator(s) available by telephone between the hours of 6 AM and 6 PM Pacific Time.
- Securities will be cleared on-line at the DTC, Federal Reserve, and other clearing agents;
- Foreign tax liability will be monitored and the tax reclaim process will be actively managed with tax reclaims and collections aggressively processed to the extent provided by the most recent tax treaties;
- The custodian will monitor and pursue claims with sub-custodians and tax authorities;
- A report will be prepared detailing the status of outstanding tax reclaims;
- Detailed tax reclaim treaty provision information (including the tax rates on foreign entities on dividends) will be made available on a daily and real-time basis for CalPERS use;
- Electronic access to trade data will be provided to CalPERS, consultants, investment managers, and any other third party approved in advance by CalPERS;
- A comprehensive system of selecting sub-custodians, evaluating and monitoring their internal control structures, performance and financial condition will be in place (including compliance with SEC Regulation 17-f for custody of assets), enabling assurance that proper settlement will be coordinated for non-US equity, non-US fixed income, and other non-US investments including derivative instruments;
- The custodian is expected to process trades in a straight-through-processing (STP) environment to the greatest extent possible, inclusive of providing enabling linkages and technologies to eliminate manual settlement processes;
- Settlement will be performed on a delivery versus payment basis;
- Assurances will be provided through a third party letter that internal controls reviews are being conducted in compliance with SAS 70 and any successor disclosures;
- The State Controller's Office (SCO) performs an oversight function on the operation and management of all public retirement funds in California. The SCO conducts reviews of CalPERS and the current custodian to assure the propriety of the administration of the funds. The custodian must accommodate a requirement that at any time internal CalPERS or SCO audit staff can evaluate all operations, controls, systems, and risks associated with master trust/custody services provided; and
- Custodian shall provide ongoing on-site training to CalPERS' staff of the custodian's online tools and systems in addition to periodic structured educational sessions regarding relevant issues to members of the CalPERS' staff. CalPERS staff will be invited to any and all general client conferences and education sessions at no additional cost to CalPERS.

- **Cash/Foreign Exchange Management**

- Daily cash flow projections and other cash management reports will be provided;
- Overnight investment management services for funds received after daily sweep deadline will be provided. All fees or costs associated with these services must be disclosed;
- Foreign exchange transactions will be executed and converted in an automated fashion either by the custodian or by other third party providers with full transparency of execution costs and time-stamped execution records maintained;
- Client-directed fund transfers (in U.S.\$ and foreign currencies) will be provided. Any fees or costs associated with these services must be disclosed; and
- Custodian can transmit foreign and domestic wires (ACH, EFT) and write client checks on behalf of the CalPERS fund as well as receive foreign and domestic wires (ACH, EFT) and checks for cash disbursements. Processes for authenticating wire transfers and maintaining security over wire transfers are in place.

- **Technology/Systems Support**

- Systems in use can interface with CalPERS Local Area Network (LAN) for the purposes of downloading reports and extracting data for analysis using software products such as Microsoft Excel, and support "inquiry only" access by various internal and external users;
- Interfaces will be provided for CalPERS' internal and external managers as well as other authorized parties at CalPERS' direction;
- Custodian must be able to interface with all current and future third party alternative asset class management systems. Specifically, the custodian must be able to maintain regular electronic communication protocols with other current service providers including International Fund Services (IFS) and PrivateEdge in a manner transparent to CalPERS;
- A monthly file of all transactions in all CalPERS accounts will be provided to the CalPERS investment and accounting systems for the purpose of custodial reconciliation and verification no later than the sixth (6th) business day of the month for all accounts maintained by the custodian;
- An electronic file will be provided on a daily basis to the claims unit of the SCO and the CalPERS fund with details of each cash transaction and any changes to the transaction – with assurance that all transactions contain evidence of proper authorization and control. Assurance will be provided that once transaction detail is received by the SCO, details will not be altered or amended without specific knowledge and approval of SCO audit staff;

- The custodian is required to wire (ACH, EFT) all cash receipts to the State Treasurer's Office (STO) for the CalPERS fund and receive a wire for all cash disbursements on a daily basis;
- Complete histories of investment activities of all CalPERS holdings shall be maintained throughout the term of the custodial relationship and as subject to the State of California records retention requirements which require at least an eight (8) year retention;
- Standard reports will be provided as requested by CalPERS and included in the fixed core custodial fee;
- Ad hoc query and reporting functions will be available and the custodian shall, by mutual agreement, and in a timely manner, be provided at no additional charge. Additional custom reports that require creation from sources other than currently available, online data (to comply with industry-standard report formats developed in the future) as requested by CalPERS will be negotiated at the time of the request;
- On-site training will be provided to CalPERS staff during the initial conversion process and is expected to be provided on an ongoing basis with an annual periodicity. Custodian shall conduct an annual technology conference, the results of which must include a mutually agreeable annual technology work plan between custodian and CalPERS;
- Adequate protection will be provided against unauthorized access to CalPERS records under the custodian's control;
- The custodian must be capable of transmitting encrypted data files following CalPERS standards, which are using either SSH (known as Secure Shell / Secure Socket Shell) or PGP (Pretty Good Privacy);
- Records will be safeguarded against potential loss or destruction by fire, theft, vandalism, storm, earthquake, or any other hazard, by retaining backup data in a secure location so that records (current at least to the prior month-end and the end of the preceding day) can be recreated within a 24-hour period;
- An established and proven business continuity plan for emergency situations is in place which provides for record re-creation and operations resumption within twenty-four (24) hours of any occurrence of any major disaster or other cause which destroys records and/or disrupts normal operation of the custodian's systems (the continuation of such service is furthermore guaranteed within twenty-four (24) hours);
- Computer records of all audited investment transactions and month-end positions will be maintained on electronically readable storage media for eight (8) years (these records will be checked for viability on an annual basis and migrated, if necessary, to more current technology in order to maintain accessibility during the entire retention period);
- The custodian has reviewed the requirements of the CalPERS *Middleware* protocol (introduction and specifications included in the Document Library) for the large scale delivery of custodial data in a single

transmission, and agrees to be bound by the delivery methods and content included therein as well as any reasonable changes made to the content described therein in the future; and

- The custodian's online systems must report the same information as the audited accounting systems once audited values are available.
- **Transition Planning and Support (if applicable)**
 - All non-incumbent institutions have prepared a detailed transition plan that includes: timing of transition phases, staffing levels (including those of client), resource commitments (including those of client), detailed transference of all historical data from current custodian, and other considerations.
- **Third-Party/Principal Securities Lending Program Support**
 - Third-party lender activities will be reported and the overall custodial operational relationship managed in the presence or absence of such relationships;
 - Custodian will supply customized daily availability feeds to all of CalPERS' agents (currently 4);
 - The custodian will on an ad hoc basis, with no extra charge, calculate portfolio statistics to include turnover for the purpose of providing data for portfolio auctions; and
 - The custodian will abide by a third-party lending operational support agreement and terms contained therein.
- **Investment Performance Measurement and Analytics**
 - The custodian will provide monthly and daily performance reports and electronic files detailing the market values, cash flows, average balance, and returns of each portfolio (these reports will include both custodied and non-custodied assets as well as any consolidations deemed necessary by CalPERS);
 - The custodian will supply the performance and statistical information, within its control, needed for CalPERS to comply with California Government Code Section 20232, Annual Report of the Board. In particular, Section 20232 (g) requires CalPERS to provide the following information, "a review of the system's custodial relationship and daily cash management, purchases, sales, turnover, private placements, soft dollar purchases, and transaction costs such as commissions, dealer spreads, and accommodations";
 - Monthly reports will be provided which contain one-year and three-year standard deviations and tracking errors calculated based on daily returns for all CalPERS' portfolios and composites;

- Monthly flat files will be provided containing daily and monthly performance data and attribution, including returns by country and industry, and value added information, for all accounts, composites and benchmarks in a format prescribed by CalPERS to feed its risk measurement system;
- An updated listing of all CalPERS' accounts/composites and their assigned benchmarks will be provided in a centralized location and will be updated monthly as necessary;
- Reports will be provided in the following terms: gross, net of management fees, and net of all fees using CFA Institute-compliant calculation methods;
- Raw performance data, transactions data, rates of return, and/or any other information concerning the CalPERS' accounts will be submitted on a monthly and daily basis to vendor(s) selected by CalPERS;
- Performance analytics and attribution data will be provided for CalPERS accounts versus relevant agreed-upon benchmarks;
- Monthly performance reports detailing market performance and portfolio performance, at any level of detail or any aggregate deemed necessary by the CalPERS, will be provided including both current and historical data;
- Monthly analytic reports will be prepared in formats acceptable to CalPERS;
- Daily rates of return will be delivered on the next business day for all public market investments, asset classes, and other composites at the direction of CalPERS;
- A monthly rate of return and market value reconciliation will be performed between the performance measurement provider and the investment managers;
- Monthly performance rate of return tolerances for public market manager reconciliations will be performed based on contract terms in effect with each manager; and
- Alternative investments may be calculated with both time-weighted and internal (dollar-weighted) rates of return.

B. TERM OF AGREEMENT

The term of this Agreement shall be from April 1, 2006 through June 30, 2009, unless terminated earlier pursuant to Section H or extended pursuant to Section D, paragraph 9. Upon mutual agreement, this contract may be extended for up to two successive one-year periods.

C. AMOUNT OF AGREEMENT

Contractor shall be paid at the rate of \$ per quarter for services rendered. The total amount payable under this contract shall not exceed the sum of \$, unless amended to increase encumbered funds.

D. GENERAL PROVISIONS

1. Time is of the Essence

Time is of the essence in this Agreement.

2. Fees

The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

3. Invoices and Payments

Contractor shall submit itemized quarterly invoices in arrears. Subcontracted work shall be itemized separately, identifying the firm, whether it is a targeted business enterprise (see section , paragraph), services performed and costs. All invoices for payment shall be for work already performed and no payments will be made in advance of services rendered. Invoices should be sent, in triplicate, stating the Contract Number to:

California Public Employees' Retirement System
Administrative Accounting
P.O. Box 942703
Sacramento, CA 94229-2703

CalPERS shall make payment to Contractor as promptly as fiscal procedures permit for performance under this Agreement and in accordance with invoices submitted. If Contractor is a nonprofit organization and contract value is less than \$500,000, or if Contractor is a small business, payment is due 30 days from the date the services are received and accepted by CalPERS or 30 days from the date a correct invoice is received in the office specified by CalPERS, whichever is later. Payment is due to any other Contractor 45 days from the date the services are received and accepted by CalPERS or 45 days from the date a correct invoice is received in the office specified by CalPERS, whichever is later. When provision is made for a testing period preceding acceptance by CalPERS, date of acceptance shall mean the date services are accepted by CalPERS during the specified testing period. State agencies are prohibited from making interest penalty payments of less than \$75.00.

4. Taxes

CalPERS is exempt from federal excise taxes and shall not make any payment for any personal property taxes levied on Contractor or any taxes levied on

employee wages. The only taxes CalPERS will pay on the services rendered pursuant to this Agreement are state and local sales or use taxes.

5. Funding Provisions

This Agreement is valid subject to availability of funds approved by the CalPERS Board of Administration, in accordance with Article XVI, section 17, California Constitution. If this Agreement overlaps CalPERS fiscal years, CalPERS' monetary obligation under this Agreement in subsequent fiscal years is subject to and contingent upon availability of funds budgeted for the purpose of this contract.

6. Severability

Should one or more provisions of this contract be held by any court to be invalid, void or unenforceable, the remaining provisions shall nevertheless remain and continue in full force and effect.

7. Force Majeure

Neither party to this Agreement shall be liable for damages resulting from delayed or defective performance when such delays arise out of causes beyond the control and without the fault or negligence of the offending party. Such causes may include, but are not restricted to, Acts of God or of the public enemy, acts of the State in its sovereign capacity, fires, floods, power failure, disabling strikes, epidemics, quarantine restrictions, and freight embargoes.

8. Nondiscrimination

During the performance of this Agreement, contractor and its subcontractors, as well as their agents and employees, shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (including health impairments related to or associated with a diagnosis of cancer for which a person has been rehabilitated or cured), age (40 or over), marital status, and use of family and medical care leave pursuant to federal law. Contractors and subcontractors, as well as their agents and employees, shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors, as well as their agents and employees, shall comply with the provisions of the Fair Employment and Housing Act (Government Code, section 12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

9. Amendments

This Agreement may be amended by mutual consent of the parties. Except as provided herein, no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

10. Waivers

No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any right, power or privilege hereunder, nor any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

11. Incorporation of Amendments to Applicable Laws

Any references to sections of federal or state statutes or regulations shall be deemed to include a reference to any amendments thereof and any successor provisions thereto.

12. Confidentiality

All financial, statistical, personal, technical and other data and information relating to CalPERS' operation which are designated confidential by CalPERS which become available to Contractor shall be protected by Contractor from unauthorized use and disclosure.

13. Attorney's Fees and Costs

In the event of any litigation between the parties to enforce or interpret the provisions of this Agreement, the non-prevailing party shall, unless both parties agree to the contrary, pay the expenses arising from such litigation, including reasonable attorneys' fees, allocated costs for services of in-house counsel, and court costs, of the prevailing party. These expenses shall be in addition to any other relief to which the prevailing party may be entitled.

14. Non-Assignment

Neither this Agreement nor any rights or obligations hereunder may be assigned by either party without the prior written consent of the other party.

15. Titles/Section Headings

Titles or headings are not part of this Agreement, are for convenience of reference only, and shall have no effect on the construction or legal effect of this Agreement.

16. Disputes

Any dispute concerning a question of fact arising under the terms of this Agreement which is not disposed of within a reasonable period of time by Contractor and CalPERS employees normally responsible for the administration of this Agreement shall be brought to the attention of the Executive Officer (or designated representative) of each organization for joint resolution. At the request of either party, CalPERS shall provide a forum for the discussion of the disputed item(s), at which time a third party, mutually agreed upon by the parties to this Agreement, shall be requested to assist in the resolution of the dispute. If agreement cannot be reached through the application of high level management attention, either party may assert its other rights and remedies within this Agreement or within a court of competent jurisdiction.

CalPERS and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their responsibilities under this Agreement which are not affected by the dispute.

17. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the State of California (without regard to any conflict of laws provisions) to the extent such laws have not been preempted by applicable federal law. Any suit brought hereunder (including any action to compel arbitration or to enforce any award or judgment rendered thereby) shall be brought in the state or federal courts sitting in Sacramento, California, the parties hereby waiving any claim or defense that such forum is not convenient or proper. Each party agrees that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by California law.

18. Independent Contractor

Contractor and Contractor's personnel shall operate as independent Contractors and shall not be considered as employees or agents of CalPERS or the State of California.

19. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

20. Notices

The parties agree that to avoid unreasonable delay in the progress of the services performed hereunder, Contractor and CalPERS shall each designate specific staff representatives for the purpose of communication between the parties. Any notice or other written communication required or which may be given hereunder shall be deemed given when delivered personally, or if mailed, three (3) days after the date of mailing; unless by express mail, telecopy, or telegraph, then upon the date of confirmed receipt, to the following representatives:

For CalPERS:

California Public Employees' Retirement System
Investment Office
Attention: Contract Manager
400 Q Street
Sacramento, CA 95814
Telephone No. (916)
FAX No. (916)

For Contractor:

Contractor
Company
Address
City/State/Zip Code
Telephone No.
FAX No.

Either party hereto may, from time to time by notice in writing served upon the other as aforesaid, designate a different mailing address or a different or additional person to which all such notices or demands thereafter are to be addressed.

21. Ambiguities Not Held Against Drafter

This contract having been freely and voluntarily negotiated by all parties, the rule that ambiguous contractual provisions are construed against the drafter of the provision shall be inapplicable to this contract.

E. AFFIRMATIVE COVENANTS

1. Permits and Licenses

Contractor shall carry out its duties and responsibilities herein in accordance with, be limited in the exercise of its rights by, and observe and comply with, all federal, state, city and county laws, rules or regulations affecting services under this Agreement. Contractor shall procure and keep in full force and effect during the term of this Agreement all permits and licenses necessary to accomplish the work contemplated in this Agreement.

2. Reports and/or Meetings

- a) Contractor shall provide oral or written progress reports as requested by CalPERS to determine if Contractor is performing to expectations or is on schedule, to provide communication of interim findings, and to afford occasions for discussing and resolving problems encountered.
- b) Contractor shall meet with CalPERS' staff and/or the Board upon request to discuss progress on the Agreement or to present findings, conclusions and recommendations.

3. Books and Records

Contractor shall keep accurate books and records connected with the performance of this Agreement. Contractor shall ensure that books and records of subcontractors, suppliers, and other providers shall also be accurately maintained. Such books and records shall be kept in a secure location at the Contractor's office(s) and shall be available for inspection and copying by CalPERS and its representatives at any time.

4. Audit

- a) During and for three years after the term of this Agreement, Contractor shall permit the Bureau of State Audits, CalPERS, and its authorized representatives, and such consultants and specialists as needed, at all reasonable times during normal business hours to inspect and copy, at the expense of CalPERS, books and records of Contractor relating to its performance of this Agreement.
- b) Contractor shall be subject to examination and audit by the Bureau of State Audits, CalPERS, and its authorized representatives, and such consultants and specialists as needed, during the term of this Agreement and for three years after final payment under this Agreement. Any examination or audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering this Agreement. Contractor shall cooperate fully with the Bureau of State Audits, CalPERS, and its authorized representatives, and such consultants and specialists as needed, in connection with any examination or audit. All adjustments, payments, and/or reimbursements determined to be necessary by any examination or audit shall be made promptly by the appropriate party.

5. Additional Documents

Contractor and CalPERS agree to execute such additional documents, and perform such further acts, as may be reasonable and necessary to carry out the provisions of this Agreement.

6. Disabled Veteran Participation Goal

- a) Contractor agrees that, as a Contractor of CalPERS, it will meet the requirements of the Board's policies which embrace section 10115, et seq. of the Public Contract Code of California and Military and Veterans Code section 999, et seq., regarding the 3% disabled veteran business enterprise (DVBE) participation goal for state contracts. DVBE is referred to hereafter as a "Targeted Business Enterprise."
- b) Contractor, in contracting for goods and services pursuant to this Agreement, shall make good faith efforts to comply with the Board's objectives and then-current policies regarding targeted business enterprises. Contractor shall report such efforts and the level of participation by DVBEs to CalPERS in the format prescribed by CalPERS.
- c) Nothing shall be construed to authorize any contractor to discriminate in the solicitation or acceptance of bids for subcontracting, or for materials or equipment, on the basis of race, color, sex, ethnic origin or ancestry.
- d) Contractor agrees to provide CalPERS or its delegate with any information reasonably necessary to comply with the obligations set forth in the applicable provisions of PCC sections 10115, et seq. Upon reasonable notice, Contractor shall permit CalPERS or its delegate access to its premises during normal business hours to interview employees and to inspect and copy books, records, accounts, and other materials for the purpose of determining compliance with the applicable provisions of PCC sections 10115, et seq. and Title 2, California Code of Regulations, sections 1896.60, et seq. Contractor agrees to maintain such records for a period of three (3) years after final payment under this Agreement. Contractor further agrees to make this paragraph applicable to all subcontracts entered into hereunder.

7. Conflict of Interest

All actual and potential Conflicts of Interests of the firm and each Key Personnel must be fully disclosed in writing. The firm shall explain in writing how it proposes to manage or mitigate all potential or actual Conflicts of Interests of the firm or any Key Personnel. The disclosure requirements relating to Conflicts of Interests shall be interpreted broadly and in cases where the firm is unsure whether an actual or potential Conflict of Interest actually exists, the firm should nevertheless disclose the actual or potential Conflict of Interest of the firm or any Key Personnel. Such disclosures must be updated as changes in status occur as required by the terms of the contract, or otherwise in accordance with CalPERS' policy and or procedures relating to disclosure of Conflicts of Interest in effect during the term of such contract, but, in any event, no less than annually.

In addition, at the time of an assignment or as soon thereafter as practicable, the Contractor shall disclose in writing all actual or potential Conflicts of Interest of the Contractor or any of its Key Personnel related to such assignment.

All disclosures shall conform to CalPERS' policy and or procedures relating to disclosure of Conflicts of Interest in effect during the term of such contract and shall be specific enough in detail to allow CalPERS to knowingly and intelligently analyze the actual or potential Conflict of Interest. Disclosures should be made to the CalPERS CIO, General Counsel, and the Contract Manager.

A "Conflict of Interest" includes those circumstances that create or have the potential to create an actual or reasonably perceived conflict with the firm's and/or any Key Personnel's fiduciary duty of exclusive loyalty to CalPERS. A Conflict of Interest includes personal Conflicts of Interests of any Key Personnel or any Key Personnel's spouse, domestic partner, or dependent children.

In the event that Contractor or its Key Personnel fails to disclose a Conflict of Interest and/or fails to receive a written waiver from CalPERS as required by this section, CalPERS, in its sole and absolute discretion, may penalize Contractor up to five percent of the total contract price or require Contractor to pay for substitution of services.

Contractor acknowledges that the System is subject to the provisions of the Political Reform Act of California (Government Code section 81000, et seq., and all regulations adopted thereunder, including, but not limited to, Title 2, California Code of Regulations, section 18700) and Contractor shall comply promptly with any requirement thereunder. If required by law, Contractor shall require its Key Personnel named and later all substitutions thereto to file Statements of Economic Interests in compliance with CalPERS' Conflict of Interest Code (Title 2, California Code of Regulations, section 560, et seq.).

Contractor acknowledges that if its Key Personnel are required to file a Statement of Economic Interests, they are subject to the ethics training requirement found at Government Code sections 11146 – 11146.4 that require new filers to satisfy the ethics training requirement within six months of the commencement of the contract and at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter."

8. Evaluation of Contractor

Pursuant to Public Contract Code section 10369, the Staff shall evaluate Contractor's performance under the terms and conditions of this Agreement within sixty (60) days after the completion of Contractor's performance under this Agreement. If the evaluation indicates unsatisfactory performance, a copy will be sent to the Department of General Services, the Office of Legal Services and to Contractor who may file a response to the evaluation. The evaluation and response shall remain on file for thirty-six (36) months and shall not be public records.

9. Key Personnel

- a) Attachment , contains a resume for each member of Contractor's staff who will exercise a significant administrative, policy, or consulting role

under this Agreement. These personnel shall be hereafter referred to (both individually and collectively) as "Key Personnel".

- b) Contractor shall not substitute, replace or reassign Key Personnel without CalPERS' prior approval. However, with CalPERS' prior approval, the parties may agree in writing to a change in these Key Personnel, which writing shall become a part of this Agreement.
- c) This Agreement may be terminated immediately, in CalPERS' sole discretion and upon written notice from CalPERS to Contractor, because of any change in or departure of Contractor's Key Personnel.

10. Changes in Control, Organization or Key Personnel

Contractor shall promptly, and in any case within five (5) calendar days, notify CalPERS in writing: (i) if any of Contractor's representations and warranties, as set forth in this Agreement, cease to be true at any time during the term of this Agreement; (ii) of any change in Contractor's staff who exercise a significant administrative, policy, or consulting role under this Agreement, including without limitation the Key Personnel; (iii) of any change in the majority ownership, control, or business structure of Contractor; or (iv) of any other material change in Contractor's business, partnership or corporate organization. All written notices from Contractor under this provision shall contain sufficient information to permit CalPERS to evaluate the changes within Contractor's personnel or organization under the same criteria as was used by CalPERS in its award of this Agreement to Contractor. Contractor agrees to provide CalPERS with such additional information as CalPERS may request.

11. Indemnification

Contractor shall indemnify, defend and save harmless the State of California, CalPERS, the CalPERS Board of Administration, the California Public Employees' Retirement Fund, and all of the officers, trustees, agents and employees of the foregoing, from and against any and all losses, costs, liabilities, damages or deficiencies, including interest, penalties and attorneys' fees, which (i) arise out of or are due to a breach by Contractor of any of its representations, warranties, covenants or other obligations contained in this Agreement, or (ii) are caused by or resulting from Contractor's acts or omissions constituting bad faith, willful misfeasance, negligence or reckless disregard of its duties under this Agreement, or (iii) accrue or result to any of Contractor's subcontractors, materialmen, laborers or any other person, firm or corporation furnishing or supplying services, material or supplies in connection with the performance of this Agreement.

12. Insurance and Bonding Requirements

Contractor warrants that it carries adequate liability, workers' compensation, and other necessary insurance and shall maintain such insurance at levels acceptable to CalPERS in full force and effect during the term of this Agreement.

Contractor agrees to furnish satisfactory evidence of this insurance coverage to CalPERS upon request.

The contractor warrants that it meets the bonding requirements provided by Section 412 of the Employment Retirement Income Security Act of 1974 (ERISA), or that it carries at least an equivalent fidelity bond applicable to the Contractor's actions under this Agreement.

13. Subcontractors

- a) Contractor shall perform the work contemplated with resources available within its own organization. No other portion of the work pertinent to this Agreement shall be subcontracted without written authorization by CalPERS. The subcontractor must be mutually agreed upon in advance by both parties.
- b) Contractor shall require any subcontractor agree to be bound by all provisions, of this Agreement as applicable.

14. Notice of Proceedings

Contractor shall promptly notify CalPERS in writing of any investigation, examination or other proceeding involving Contractor, or any Key Personnel, commenced by any regulatory agency which proceeding is not conducted in the ordinary course of Contractor's business.

15. Cumulative Remedies

The rights and remedies provided herein are cumulative and are not exclusive of any rights or remedies which any party may otherwise have at law or in equity.

16. Binding Effect

This Agreement, any instrument or agreement executed pursuant to this Agreement, and the rights, covenants, conditions and obligations of Contractor and CalPERS contained therein, shall be binding upon the parties and their successors, assigns and legal representatives.

17. Gift and Political Contributions Disclosure

Contractor must comply with Government Code section 20152.5, as it exists and as amended by the Legislature and implemented by the Board of Administration from time to time, concerning gift and campaign disclosure policies. The existing code section is stated as follows:

No matter involving any vendor or contractor in their individual or any other capacity shall be considered during a closed session on any transaction involving the system unless, prior to the closed session, a written disclosure has been submitted by the vendor or contractor of any campaign contributions aggregating two hundred fifty dollars (\$250) or

more and any gifts aggregating fifty dollars (\$50) or more in value that the vendor or contractor has made during the preceding calendar year to any member of the board or any officer or employee of the system. Failure to disclose the campaign contributions and gifts shall provide the basis for disqualification of the contractor or the vendor.

18. Fiduciary Duties of Custodian

a. Prudence

The Contractor acknowledges that this Agreement places it in a fiduciary relationship with the Board. As such, the Contractor shall discharge each of its duties and exercise each of its powers (as those duties and powers are defined herein), with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with such aims.

b. Exclusive Benefit

Contractor shall at all times discharge its obligations under this Agreement strictly in accordance with the standards of conduct applicable to a plan fiduciary as set forth in California Constitution Article XVI, Section 17, and California Government Code section 2015 and as contemplated by section 3(21)(A) of the Employee Retirement Income Security Act of 1974 (ERISA). Contractor shall promptly notify CalPERS in writing of any proposed investment or other activity that involves, directly or indirectly, any conflict of interest as contemplated by the standards applicable to a plan fiduciary as aforesaid, by this Agreement or otherwise. Contractor shall not delegate its fiduciary responsibilities assumed pursuant to this Agreement, except as expressly permitted by this Agreement.

19. Financial Statements

Contractor shall furnish to CalPERS no less frequently than annually, and from time to time at the request of CalPERS, financial statements of Custodian and Custodian's partners, or other affiliates as may be requested by CalPERS. Such annual financial statements shall be audited and delivered to CalPERS no later than 90 days after the end of Custodian's fiscal year. Periodic reports, as requested by CalPERS, may be unaudited, and shall be delivered twenty days after any such request.

F. NEGATIVE COVENANTS

1. Publicity

No publicity release or announcement concerning this Agreement or the transactions contemplated herein shall be issued by Contractor without advance written approval by CalPERS.

2. Services or Procurement Resulting from Agreement

Neither Contractor, nor any of its subsidiaries, officers or directors, may submit a bid or be awarded a contract for the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed to be an outgrowth of the advice or recommendations that Contractor provides under this Agreement.

G. REPRESENTATIONS AND WARRANTIES

1. Agreement Does Not Violate Law

Neither the execution of this Agreement nor the acts contemplated hereby nor compliance by Contractor with any provisions hereof will:

- a) Violate any provision of the charter documents of the Contractor;
- b) Violate any statute or law or ordinance or any judgment, decree, order, regulation or rule of any court or governmental authority applicable to Contractor; or
- c) Violate, or be in conflict with, or constitute a default under, or permit the termination of, or require the consent of any person under, any agreement to which Contractor may be bound, the violation of which in the aggregate would have a material adverse effect on the properties, business, prospects, earnings, assets, liabilities or condition (financial or otherwise) of Contractor.

2. Statement of Compliance - Nondiscrimination

Contractor's signature affixed hereon and dated shall constitute a certification under the penalty of perjury under the laws of the State of California that Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code section 12990 (a-f) and Title 2, California Code of Regulations, section 8103, et seq.

3. Americans with Disabilities Act

By signing this Agreement, Contractor assures CalPERS that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

4. National Labor Relations Board Certification

Contractor, by signature hereto, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court

which orders Contractor to comply with an order of the National Labor Relations Board.

5. Due Organization

Contractor is duly organized, validly existing and in good standing under the laws of the State of its incorporation or organization.

6. Power and Authority

Contractor represents and warrants that it has the power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution of this Agreement has been duly authorized by Contractor and no other proceeding on the part of Contractor is necessary to authorize this Agreement. Contractor has completed, obtained and performed all registrations, filings, approvals, authorizations, consents or examinations required by any government or governmental authority for its acts contemplated by this Agreement.

7. Drug-Free Workplace

Contractor hereby certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code section 8350, et seq.) and will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b) Establish a Drug-Free Awareness Program to inform employees about:
 - 1. The dangers of drug abuse in the workplace;
 - 2. The person's or organization's policy of maintaining a drug-free workplace;
 - 3. Any available counseling, rehabilitation and employee assistance programs; and,
 - 4. Penalties that may be imposed upon employees for drug abuse violations.
- c) Every employee who works on the proposed Agreement will:
 - 1. Receive a copy of the company's drug-free policy statement; and,
 - 2. Agree to abide by the terms of the company's statements as a condition of employment on the Agreement.

CalPERS may terminate this Agreement if the Contractor fails to comply with these requirements.

8. Signature Authorization

The person signing this Agreement warrants that he/she is an agent of Contractor and is duly authorized to enter into this Agreement on behalf of Contractor.

9. Entire Agreement/Incorporated Documents/Order of Precedence

- a) This Agreement contains all representations and the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda, or agreements are replaced in total by this Agreement.
- b) This Agreement shall consist of the terms of this Agreement, and all attached documents which are expressly incorporated herein. In addition to those documents which are incorporated elsewhere in this Agreement, the following documents are, by this reference, also incorporated herein: (i) Request for Proposal No. XX-XXX, dated XXX, including any amendments or clarification issued by CalPERS (collectively "the RFP"); and (ii) Contractor's response to the RFP dated XXX.
- c) In the event there are any inconsistencies or ambiguities among the terms of this Agreement and incorporated documents, the following order of precedence shall be used: (i) applicable laws; (ii) the terms and conditions of this Agreement, including attachments; (iii) the RFP; (iv) Contractor's response to the RFP; and (v) any other provisions, terms, or materials incorporated herein.

10. Child Support Compliance Act

For any contract in excess of \$100,000, the contractor acknowledges in accordance there with, that:

- a) The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

H. TERMINATION

1. Termination at Option of CalPERS

This Agreement may be terminated in whole or in part at any time upon 30 calendar days' written notice by CalPERS, for any reason. Upon receipt of a termination notice, Contractor shall promptly discontinue all services affected unless the notice specifies otherwise.

In the event CalPERS terminates all or a portion of this Agreement for any reason, it is understood that CalPERS will provide payment to Contractor for satisfactory services rendered prior to the termination, but not in excess of the maximum contract amount.

2. Termination for Default

In addition to any termination of this Agreement in accordance with Item 3 on the reverse of the Standard Agreement, form Std. 213, CalPERS may, by two-day written notice to Contractor, and without any prejudice to its other remedies, terminate this contract because of the failure of Contractor to fulfill its contract obligations. Upon receipt of any notice terminating this Agreement, Contractor shall immediately discontinue all services affected, unless the notice directs otherwise.

In such event, CalPERS shall pay Contractor only the reasonable value of the services rendered. At CalPERS sole discretion, CalPERS may offer an opportunity to cure any breach(es) prior to terminating for default.

3. Termination For Insolvency

Contractor shall notify CalPERS immediately in writing in the event that Contractor files any federal bankruptcy action or state receivership action, any federal bankruptcy or state receivership action is commenced against Contractor, Contractor is adjudged bankrupt, or a receiver is appointed and qualifies. In the event of any of the foregoing events, or if CalPERS determines, based on reliable information, that there is a substantial probability that Contractor will be financially unable to continue performance under this Agreement, CalPERS may terminate this Agreement and all further rights and obligations immediately [by giving five (5) days' notice in writing in the manner specified herein].

4. Convenience

If after notice of termination for failure to fulfill contract obligations, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of CalPERS.

5. Completion

In the event of termination for default, CalPERS reserves the right to take over and complete the work by contract or other means. In such case, Contractor will

be liable to CalPERS for any additional cost incurred by CalPERS to complete the work whether reimbursed or not.

6. Effect of Termination

All duties and obligations of CalPERS and Contractor shall cease upon termination of this Agreement, except that:

- a) Each party shall remain liable for any rights, obligations, or liabilities arising from activities carried on by it under this Agreement prior to the effective date of termination.
- b) Contractor shall provide for the return of all records of CalPERS to CalPERS or its designee and shall cooperate fully to effect an orderly transfer of services.

7. Extended Operation Services. If the Board is delayed by causes other than those caused by the Contractor, its agents or subcontractors, in phasing out the services provided by this Agreement beyond the effective date of termination, the Contractor shall provide (at CalPERS request) extended operations services for a period not to exceed six months from the effective date of termination. Such service shall be provided at the same compensation rate as provided under this agreement.